IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application No. 1883 of 2006
IN
FIRST APPEAL NO. 746 OF 2006

Shri Ravindra Mohan Shetty ..Applicant

V/s.

Smt. Jaitunbi Jafar Husain Muslim & others. ..Respondents

Mr. P.K. Dhakeparkar i/b. S.U.Dhakeparkar for the Applicant

Mr. A.. Abhyankar i/b R.D.Suryavanshi for the Respondents

CORAM : ANOOP V. MOHTA,J.

DATED : 14th August, 2007

P.C.

This is a civil application in first appeal against the Judgment and decree of which the operative part is as under:

" 1. Spl. Civil Suit No. 76/99 is hereby partly decreed.

2. Defendant do deliver the vacant and Peaceful possession of the suit property to the plaintiffs within 60 days from today.

3. The suit of the plaintiffs for damages and other ancillary reliefs is hereby dismissed.

4. Enquiry regarding future mesne profits be held under order 20 rule 12(1)(e) of C.P.C. separately.

5. Reg.Civil Suit No. 241/1993, M.A.No. 476/1993 and M.A. No. 301/2002 are hereby dismissed.

6. In the peculiar facts and circumstances of the case both the parties are left to hear their own costs.

2. The original plaintiff, therefore, on this application filed by the original defendant basically contended that the occupation of the premises ad-measuring about 7000 sq. feet without paying even arrears of licence fee/occupation charges since 1993

is unjust and cannot be permitted.

3. Without going into the further controversy whether the occupation and/or possession of the applicant is of tresspassers or tenant, at this stage the fact remains that applicant is occupant since 1993 basically by paying at the rate of Rs. 3000/- per month. The learned counsel appearing for the appellant submits that there are some part payments made which need to be adjusted.

4. There remain nodoubt that whomsoever in occupation of such land/premises must pay the reasonable compensation to the defendant in question. In view of the above order, admittedly facts need to be enquired at later stage of the proceedings, however, considering the facts and circumstances of the case, I am of the view that the interim order as granted by this Court shall be subject to basic condition that the applicant should deposit the arrears of rent/occupaton charges since 1993 at the rate of Rs. 3000/- per month. It is needless to say that it is subject to adjustment of money if already deposited.

5. The learned counsel appearing for the defendant basically further contended that apart from the above arrears, considering the Supreme Court judgment in **Atma Ram Properties (P) Ltd. v/s. Federal motors (P) Ltd. reported in 2005 1 Supreme Court Cases 705 and Marshall Sons & Co. (I) Ltd. v/s. Sahi Oretrans (P) Ltd. & anr. reported in 1999 Supreme Court Cases 325,** it is necessary that such occupants must pay just and reasonable occupation charges pending the decision of the present first appeal. The aspect as contemplated under order 41 rule 5(3) of Civil Procedure Code (CPC) just cannot be over ruled while considering to grant stay of interim order pending the decision of appeal.

6. Learned counsel appearing for the defendant further submitted that there is substantial material on record to justify the area of the premises i.e. to the extent of 7000 sq. feet which remain undisputed till this date. The location, the area and the occupation of the premises have definite role to play while deciding even the use and occupation charges pending the first appeal, even in suit like this specially when it concern and relates to the property decreed between the parties.

7. I am of the view that in the facts and circumstances of the case, as the appellant is using the said premises for commercial purpose, the monthly charges at the rate of Rs. 11,000/- should be taken as use and occupation charges hereinafter pending the decision of the present first appeal. This amount according to me is reasonable and fair amount to be compensated by the applicant who is occupying the said premises in question even though there is a decree in favour of the plaintiff.

8. The learned counsel appearing for the applicant submitted that in this background the defendant/respondent should cooperate in so far as supply of electricity connection or meter in his name as because of their objection it was initially rejected.

9. In this background, I am of the view that pending the decision of the present first appeal the respondent/original plaintiff should cooperate to see that applicant should get all the basic amenities like electricity and water, till the decision of the first appeal.

10. In view of this the following order:

1) The Applicant should deposit arrears at the rate of Rs. 3000/- from January 1993 till the date of decree i.e. January 2006. This is subject to the adjustment of money, if already deposited.

2) The Applicant should pay Rs.11,000/- per month since date of decree February 2006 onwards regularly, pending the disposal of the first appeal.

3) The applicant should deposit the arrears on both counts within twelve weeks in the trial Court.

4) In case the applicant failed to deposit the arrears within three months as directed, the interim orders stand vacated without reference to the Court.

5) If the applicant commits two cosecutive defaults in making payment of the

lease/occuupation charges as ordered above, the interim order also stand vacated.

6) The interim order as granted by this Court in terms of prayer clause (a) shall continue pending disposal of the present appeal subject to above condition. Prayer clause (a) is as follows:

> "Stay the execution, operation and implementation of the impugned Judgment and Decree dated 10/02/2006 passed by the Learned Civil Judge, Senior Division, Thane in Special Civil Suit No. 76 of 1999 pending, hearing and final disposal of the above Second Appeal."

7) The Respondents/original plaintiff are at liberty to withdraw the amount, if deposited.

8) In view of this civil application is disposed of.

[ANOOP V. MOHTA, J.]